THE STATE OF NEW HAMPSHIRE

SUPREME COURT OF NEW HAMPSHIRE

ORDER

R-2006-0001, <u>In re 2006 Annual Report of the Advisory Committee on</u> Rules

The New Hampshire Supreme Court Advisory Committee on Rules has reported a number of proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. The proposals set forth below are substantially those reported by the Advisory Committee on Rules with one exception – the supreme court has included additional proposed amendments to Superior Court Rule 62.

A. RULES RELATED TO ESTABLISHMENT OF NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM

- 1. Supreme Court Rule 37(1)(e) and 37(20)(j) re attorney discipline system. After public hearing held in June 2006, the committee recommends amending Rule 37 as set forth in Appendix A.
- 2. Supreme Court Rule 57 (including Rules 57.1 through 57.10) re the New Hampshire Lawyers Assistance Program. After public hearing held in June 2006, the committee recommends adopting these rules as set forth in Appendix B, with the method of funding to be determined by the court.
- 3. Professional Conduct Rule 1.6(c) re confidentiality of information. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix C.
- 4. Professional Conduct Rule 8.3(c) re reporting professional misconduct. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix D.

B. MISCELLANEOUS SUPREME COURT RULES

- 1. Supreme Court Rule 38, Canon 4 re financial reporting by judges. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix E.
- 2. Supreme Court Rule 42(4), 42(10)(a)(ii), and 42(12)(c) re foreign law school applicants to the bar. After public hearing held in June 2006, the committee recommends amending Rule 42 as set forth in Appendix F.

C. MISCELLANEOUS SUPERIOR COURT RULES

- 1. Superior Court Rule 35(b)(1) and 35(g) re discovery. After public hearing in June 2006, the committee recommends amending Rule 35 as set forth in Appendix G.
- 2. Superior Court Rule 62 re structuring conferences. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix H.
- 3. Superior Court Rule 94 re deadline for filing motions to suppress. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix I.
- 4. Superior Court Rule 96-A re deadline for filing motions to suppress. After public hearing in June 2006, the committee recommends amending this rule as set forth in Appendix J.
- 5. Superior Court Rule 98 F re deadline for filing pretrial motions. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix K.
- 6. Superior Court Rule 170-B re judge-conducted intensive mediation. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix L.

D. MISCELLANEOUS SUPERIOR COURT ADMINISTRATIVE RULES

- 1. Superior Court Administrative Rules 1-1, 1-2, and 3-2 through 3-16 re court stenographers. After public hearing held in June 2006, the committee recommends repealing these rules as set forth in Appendix M.
- 2. Superior Court Administrative Rule 1-6(IV) re authority of the clerk. After public hearing held in December 2005, the committee recommends adopting this rule on a permanent basis as set forth in Appendix N.

3. Superior Court Administrative Rule 3-1 re stenographers' notes. After public hearing held in June 2006, the committee recommends amending this rule as set forth in Appendix O.

E. MISCELLANEOUS DISTRICT COURT RULES

- 1. District Court Rule 2.17 re juvenile conditions on release. After public hearing in December 2004, the committee recommends amending this rule as set forth in Appendix P.
- 2. District Court Rule 3.3 (III) re records research fee. After public hearing in December 2005, the committee recommends adopting this rule on a permanent basis as set forth in Appendix Q.
- 3. District Court Rule 4.29 re mediation of small claims. After public hearing in December 2005, the committee recommends amending this rule and adopting it, as amended, on a permanent basis as set forth in Appendix R.

F. MISCELLANEOUS FAMILY DIVISION RULES (DOMESTIC RELATIONS)

- 1. Family Division (Domestic Relations) Rule 16 re agreed upon or proposed decrees. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix S.
- 2 Family Division (Domestic Relations) Rule 26 re parenting plans. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix T.
- 3. Family Division (Domestic Relations) Rule 27 re standard order of paragraphs for parenting plans. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix U
- 4. Family Division (Domestic Relations) Rule 28 re standard order of paragraphs for temporary and final decrees. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix V.
- 5. Family Division (Domestic Relations) Rule 29 re standard order of paragraphs for decree on parenting petition. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix W.

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6. Family Division (Domestic Relations) Rule 30 re personal data sheet. After public hearing held in June 2006, the committee recommends adopting this rule on a permanent basis as set forth in Appendix X.

On or before Thursday, October 12, 2006, members of the bench, bar, legislature, executive branch, or public may file with the clerk of the supreme court comments on any of the above rules. It should be noted that the Advisory Committee on Rules made no recommendation as to the appropriate funding mechanism should the court adopt proposed Supreme Court Rule 57 creating the New Hampshire Lawyers Assistance Program – the court welcomes comments regarding what the appropriate funding mechanism should be if Rule 57 is adopted.

An original and seven copies of all comments shall be filed. Comments may also be e-mailed to the court at:

rulescomment@courts.state.nh.us

Copies of the proposed changes are available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646). In addition, the proposed changes are available on the Internet at:

http://www.courts.state.nh.us/index.htm

The current rules of the New Hampshire state courts are also available on the Internet at:

http://www.courts.state.nh.us/rules/index.htm

August 28, 2006

ATTEST: ______ Eileen Fox, Clerk
Supreme Court of New Hampshire

APPENDIX A

Amend Supreme Court Rule 37(1)(e), 37(20)(j), 37(20)(k), and 37(20)(l) so that said subsections shall provide as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in strikethrough format):

[Rule 37(1)(e)]

(e) *Professional Continuity Committee* [New Hampshire Lawyers Assistance Program] Exemption: For the purposes of Rule 8.3 of the rules of professional conduct, information received by members of the New Hampshire Bar Association during the course of their work on behalf of the professional continuity committee [New Hampshire Lawyers Assistance Program] which is indicative of a violation of the rules of professional conduct shall be deemed privileged to the same extent allowed by the attorney-client privilege.

[Rules 37(20)(j), 37(20)(k), and 37(20)(l)]

- [(j) Disclosure to Lawyers Assistance Program: The Attorney Discipline Office shall have the power to disclose otherwise confidential information to the New Hampshire Lawyers Assistance Program whenever the Attorney Discipline Office determines that such disclosure would be in the public interest.]
- (i) [(k)] Duty of Participants: All participants in the proceedings shall conduct themselves so as to maintain the confidentiality mandated by this rule.

Nothing in this section prevents a grievant from disclosing publicly the conduct of an attorney which he or she believes violates the rules of professional conduct or is otherwise inappropriate. The immunity from civil liability provided by section (7) does not apply to such disclosures. This section does prohibit a grievant, however, from disclosing publicly the fact that a grievance or complaint against the attorney about the conduct had been filed with the attorney discipline system pending the grievance or complaint becoming public in accordance with the provisions of this section.

(k) [(1)] Violation of Duty of Confidentiality: Any violation of the duty of confidentiality imposed by section (20) may result in action of the professional conduct committee at the request of the non-violating party or on its own motion. That action may consist of opening the file and the proceedings earlier than would have been the case under section (20), terminating the proceedings with or without public comment, or such other action as the professional conduct committee deems appropriate in the circumstances.

APPENDIX B

Adopt <u>new</u> Supreme Court Rule 57 (including Rules 57.1 through 57.10) as follows:

RULE 57. NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM

PREAMBLE

The Supreme Court recognizes that a wide range of influences can detrimentally affect the performance of a lawyer or judge. Prominent among such influences are the effects of chemical dependence or mental conditions that result from disease, disorder, trauma or other infirmity that impair the ability of a lawyer or judge to practice or serve. Lawyer or judge impairment is detrimental to the interests of clients, litigants, our legal system, and the general public. The vast majority of States have responded to the issue of lawyer impairment by creating funded lawyer assistance programs as contemplated by this Rule, acknowledging the principle that every member of the bar has an obligation to the public to participate in an appropriate response to lawyer or judge impairment. The Supreme Court finds that the New Hampshire Lawyers Assistance Program is an appropriate method for addressing the issue of lawyer or judge impairment and that the program will promote the integrity of the legal profession and will thereby directly benefit the people of New Hampshire.

RULE 57.1. ESTABLISHMENT OF THE NEW HAMPSHIRE LAWYERS ASSISTANCE PROGRAM (LAP)

- (A) Establishment: The New Hampshire Supreme Court hereby establishes a state-wide lawyer assistance program to be known as the New Hampshire Lawyers Assistance Program (LAP), which shall provide immediate and continuing help to members of the legal profession, including, without limitation, active or prospective lawyers and judges, regardless of their status, and law students (members of the legal profession) who are affected by any physical or mental health condition that affects their ability to practice their profession, quality of life, or study of law.
- (B) Purpose: LAP has four primary purposes:

- (1) To protect the interests of clients and the general public from harm caused by impaired members of the legal profession;
- (2) To assist impaired members of the legal profession to begin and continue recovery,
- (3) To educate the bench, the bar, and the public to the causes of and remedies for impairments affecting members of the legal profession; and
- (4) To develop programs that emphasize prevention of conditions that might negatively affect members of the legal profession.
- (C) Funding and Administration:
 - (1) LAP shall be funded from _____ in the approximate amount of \$125,000.
 - (2) LAP shall seek to establish additional private and public sources of funding.
 - (3) Funding for LAP may also include gifts or bequests from any source and earnings on investments of the LAP fund.
 - (4) The fiscal year of LAP shall run from July 1 to June 30.
 - (5) LAP may retain and invest its funds which may be carried over to future fiscal years.

RULE 57.2. LAP COMMISSION

- (A) Members: The Supreme Court shall appoint commission members to administer and provide advice regarding the management of the LAP. Officers of the commission shall consist of a chair, vice-chair and secretary/treasurer. The chair and vice-chair shall be appointed by the Supreme Court. Each of the other officers shall be elected by the members of the commission annually.
- (B) Composition: The commission shall consist of eight (8) members, and shall include two persons who are not members of the legal profession. The members shall have diverse experience, knowledge and demonstrated competence in the problems of chemical dependency or mental conditions that affect members of the legal profession.
- (C) Terms: The Court shall appoint commission members for initial terms as follows:

- (1) One lawyer for one year;
- (2) One health care provider (active or retired) for two years;
- (3) One lawyer for two years;
- (4) One judge (active or retired) for two years;
- (5) One health care provider (active or retired) for three years;
- (6) One judge (active or retired) for three years; and
- (7) Two lawyers for three years.

Subsequent appointments shall be for a term of three years. No member may serve more than two successive three-year terms.

- (D) Duties of the Commission: The members of the governing body should have the following powers and duties:
 - (1) Establishing LAP's policies and procedures and providing ongoing advice regarding the same. Such policies and procedures shall be established after reasonable notice to the New Hampshire bench and bar and opportunity for comment.
 - (2) General administrative and management responsibility to operate the program to achieve its purpose and goals.
 - (3) Responsibility to hire and fire the LAP director.
 - (4) To review the budget prepared by the LAP staff and present the budget to the Supreme Court.
 - (5) To make reports to the Supreme Court annually or as otherwise required.
 - (6) To ensure that the duties listed under Rule 57.3 are carried out in the absence of a director of the program.
- (E) Meetings: The commission shall meet quarterly, upon call of the chair or upon the request of three (3) or more members. A quorum for any meeting shall be four (4) members.

RULE 57.3. DIRECTOR OF THE PROGRAM

- (A) Appointment/Hire: The commission shall recruit, hire, retain, supervise and may terminate the LAP director.
- (B) Qualifications: The director shall have sufficient experience and training to identify and assist members of the legal profession affected by the conditions described in Rule 57.1(A) above, as well as sufficient administrative expertise to competently manage a human services organization. A lawyer is preferred.

- (C) Duties and Responsibilities: The director's duties and responsibilities shall include but not be limited to the following:
 - (1) To work with the commission to develop a vision and plan to ensure that the LAP becomes a vital and credible resource for the New Hampshire legal community;
 - (2) To act as the initial contact point for all referrals to the LAP, whether voluntary or involuntary. The director should always remain accessible to current members or to any attorney seeking help, and should never be insulated from the telephone or from personal contact. The position will require that the director be ready, either alone or together with a program volunteer, to travel within the State to meet with an attorney in need of the LAP;
 - (3) To help members of the legal profession and their families to secure counseling and treatment for chemical dependency and mental conditions, by maintaining current information on available treatment services, both those that are available without charge as well as paid services. In this regard the director will be responsible for evaluating referral resources such as individual health care providers (physicians, counselors, therapists, etc.) and treatment programs, and developing a resource listing that is available for members or prospective members needing evaluation, treatment, or aftercare;
 - (4) To establish and maintain regular contact with the New Hampshire Bar Association, the Professional Conduct Committee, the Complaint Screening Committee, the Committee on Judicial Conduct and their staff, and other agencies or committees that serve either as sources of referral or resources in providing help;
 - (5) To help lawyers, judges, law firms, courts and others to identify and intervene with impaired members of the legal profession;
 - (6) To establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate under Rule 57.7 and 57.5(E). In furtherance of this duty, the director should work with the organizations listed in Rule 57.3(C)(4) above, as well as the commission, to create and maintain a working relationship that respects an appropriate balance between the goals of the LAP and those of the disciplinary committees and the New Hampshire Bar Association;
 - (7) To recruit, select, train and coordinate the activities of volunteer lawyers and judges who will provide assistance, and provide for

their identities and addresses to be generally known to the courts, bar and other appropriate referral entities. In furtherance of this duty the director should assist in coordinating volunteer support meetings and attend the meetings on a periodic basis to address questions or concerns of the volunteers;

- (8) To work to establish and maintain a confidentiality policy that ensures confidentiality as an essential component of the LAP. Included in this duty will be the establishment of rules or policies relating to maintaining the confidentiality of those seeking assistance (whether voluntary or involuntary), as well as the confidentiality of LAP volunteers. Also included is the development of rules or policies necessary to implement the immunity protections granted under Supreme Court Rule 37(1)(e);
- (9) To plan and deliver educational programs to inform the public, the judiciary, state and local bar associations, law firms, and civic organizations of the advocacy of early intervention and prevention and the assistance that is available to those in need;
- (10) With the cooperation of Franklin Pierce Law School, to plan and deliver educational programs and materials bringing to their curriculum a substance abuse component informing students of the nature and effect of substance abuse, its risks to those in the legal profession, and the resources available through LAP;
- (11) To be responsible for the day-to-day administration of the LAP, including the development of job descriptions for LAP staff personnel, and the hiring, training, and assessing of such individuals, including clinicians, assistants, and office personnel, as budgetary considerations allow. The director will also be responsible, with the oversight of the commission, for the LAP's annual budget and oversee its fiscal management;
- (12) In appropriate situations, *i.e.*, where no issue of confidentiality exists or has been waived in accordance with state law, to appear at bar disciplinary, court, or bar admission proceedings to provide testimony regarding a legal professional's progress or lack of progress in meeting the purposes for which the LAP was established;
- (13) To act as the liaison with the ABA Commission on Lawyers Assistance Programs and with lawyer assistance programs throughout the country;
- (14) To establish private and public sources of funding for LAP; and

(15) Such other duties and responsibilities established by the commission.

RULE 57.4. VOLUNTEER LAWYERS, JUDGES, AND LAW STUDENTS

The program shall enlist volunteer lawyers, judges, and law students whose responsibilities may include:

- (A) Assisting in interventions planned by LAP;
- (B) Serving as twelve-step program sponsors and/or recovery mentors;
- (C) Acting as local contact for members of the legal profession seeking help from the LAP;
- (D) Acting as a contact between LAP and the courts, the Professional Conduct Committee, the Committee on Judicial Conduct, bar organizations, local committees, and law schools;
- (E) Providing compliance monitoring when appropriate; and
- (F) Performing any other function deemed appropriate and necessary by the commission to fulfill its purposes.

RULE 57.5. SERVICES

LAP may provide the following services as the commission determines feasible based upon the available financial, volunteer, and other resources:

- (A) Immediate and continuing assistance to members of the legal profession who suffer from the effects of chemical dependency or mental conditions that result from disease, disorder, trauma or other infirmity and that affects their ability to practice their profession, quality of life, or study of law;
- (B) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;
- (C) Investigation, planning and participation in interventions with members of the legal profession in need of assistance;
- (D) Sponsoring and maintaining substance abuse and/or mental health support meetings for members of the legal profession;

- (E) Aftercare services upon request, by order, or under contract that may include but are not limited to, the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and
- (F) Monitoring services under Rule 57.7 or under contract that may include but are not limited to, the following: alcohol and/or drug screening programs, tracking aftercare, peer support and twelve-step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

RULE 57.6. REFERRALS

- (A) Self-referral: Any lawyer, judge, or law student may voluntarily call the LAP seeking assistance for him or herself.
- (B) Referrals from Third Parties: LAP shall receive referrals concerning any member of the legal profession from family members, colleagues, friends, law school faculty, law firms or any other source.
- (C) Disciplinary Authority Referrals: LAP shall receive referrals from the New Hampshire Supreme Court, the Professional Conduct Committee, the Complaint Screening Committee, the Committee on Judicial Conduct, General Counsel, Disciplinary Counsel, and the Committee on Character and Fitness (Disciplinary Authority) of the name of any lawyer whom the Disciplinary Authority determines or believes should be contacted by LAP. This provision shall not be construed to prevent the Disciplinary Authority from notifying the LAP of the name of any lawyer whom the Disciplinary Counsel determines should be contacted concerning the LAP. Once a referral is made by the Disciplinary Authority the referred lawyer has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made by the referred lawyer to any LAP personnel while seeking or receiving peer assistance or substance abuse treatment through the LAP.

RULE 57.7. REFERRALS FROM THE PROFESSIONAL CONDUCT COMMITTEE, COMMITTEE ON JUDICIAL CONDUCT, AND THE JUDICIARY

(A) Referrals: LAP may accept referrals regarding lawyers under diversion, or under conditional, provisional, or probational status from the Court, Professional Conduct Committee or the Complaint Screening Committee, and referrals of judges from the Court or the Committee on Judicial Conduct and referrals regarding prospective lawyers from the Committee on Character and Fitness.

(B) Progress Reports: When LAP accepts a referral under Rule 57.7(A), LAP may provide progress reports or reports of non-compliance by lawyers, judges, or prospective lawyers who are voluntarily receiving monitoring by LAP, or who are subject to monitoring by LAP pursuant to a court order. Notwithstanding Rule 57.8, these reports may be used as evidence in any complaint, investigation, proceeding or appeal relating to such referral from the Court, the Professional Conduct Committee, the Committee on Judicial Conduct, and the Committee on Character and Fitness.

RULE 57.8. CONFIDENTIALITY

- (A) Rule 1.6(c) of the New Hampshire Rules of Professional Conduct shall govern the confidentiality of any information revealed by a lawyer, judge, or law student who seeks or receives assistance through the LAP program.
- (B) Commission members, employees, and agents including volunteer lawyers, judges, and law students recruited under Rule 57.4 shall be deemed to be "LAP personnel" for the purposes of the confidentiality provisions of Rule 57.6(C) of this Rule and Rule 1.6(c) of the New Hampshire Rules of Professional Conduct.

RULE 57.9. DUTIES AND RESPONSIBILITIES

- (A) The duties and responsibilities of commission members, employees and agents of LAP, including volunteers serving under Rule 57.4, are duties and responsibilities owed to the Court. Nothing in these rules shall be construed as creating a civil cause of action or right of suit.
- (B) Except as otherwise required by law, or to prevent the commission of a crime, commission members, employees and agents of LAP including volunteers are relieved of the duty of disclosure of information to authorities required by N.H. Rules of Professional Conduct 8.3.

RULE 57.10. FACILITY

Any LAP office shall be so located as to be consistent with the privacy and confidentiality requirements of this Rule.

APPENDIX C

Amend Professional Conduct Rule 1.6 by adding a new paragraph (c) as follows (proposed new material is in **[bold and in brackets])**:

Rule 1.6. Confidentiality of Information

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
- (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or bodily harm or substantial injury to the financial interest or property of another; or
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.
- [(c) The relationship between New Hampshire Lawyers Assistance Program personnel and a lawyer, judge or law student who seeks or receives assistance through the New Hampshire Lawyers Assistance Program shall be the same as that of lawyer and client for purposes of the application of Rule 1.6, Rule 8.1, and Rule 8.3.]

APPENDIX D

Amend Professional Conduct Rule 8.3(c) as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in strikethrough format):

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6, or information received by members of the New Hampshire Bar Association during the course of their work on behalf of the Professional Continuity Committee. [New Hampshire Lawyers Assistance Program.]

APPENDIX E

Adopt on a permanent basis amendments to Supreme Court Rule 38, Canon 4 (H) and (I), which were adopted on a temporary basis by supreme court order dated January 17, 2006. No changes are being made to the temporary rules now in effect.

H. Compensation, Reimbursement and Reporting

- (1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.
- (a) Compensation shall not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- (b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports.

- (a) For each calendar year up to and including calendar year 2006, a judge shall report on or before April 15 of each year, with respect to the preceding calendar year, whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of the compensation so received. The report shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court.
- (b) For calendar year 2007 and each calendar year thereafter, a judge shall file a fully-completed New Hampshire Judicial Branch Financial Disclosure Statement on or before April 15 of each year, with respect to the preceding calendar year. The New Hampshire Judicial Branch Financial Disclosure Statement shall be filed as a public document in the office of the clerk of the New Hampshire Supreme Court.

The form of the New Hampshire Judicial Branch Financial Disclosure Statement shall be approved, by order, by the New Hampshire Supreme Court, and shall require, at a minimum, that a judge report whether or not the judge has received any compensation other than judicial salary, and, if so, the nature of the activity for which the compensation was received, the name of the payor and the amount of the compensation so received. Blank forms may be obtained by request from the clerk of the New Hampshire Supreme Court, and shall also be available on the New Hampshire Judicial Branch website.

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

<u>Financial disclosure forms</u>, as public documents, should be filed and publicly available in a central location.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law and by these Canons are required to safeguard the proper performance of the judge's duties and to avoid the appearance of impropriety.

APPENDIX F

Amend Supreme Court Rules 42(4), 42(10)(a)(ii), and 42(12)(c) as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in strikethrough format):

[Rule 42(4)]

- (4) (a) Every such applicant must furnish satisfactory proof that before beginning the study of law the applicant successfully completed at least three (3) years of work required for a bachelor's degree in an accredited college.
- (b) Every such applicant must have graduated from a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school, or from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school. Notwithstanding the foregoing sentence, a person who has graduated from a law school in an English speaking, common law country and who has pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association shall be eligible to apply for examination provided that such person is (a) a member in good standing of the bar of that country, or (b) the holder of a master's degree from a law school approved by the American Bar Association or (c) a member of the bar of one of the States of the United States who was admitted after examination and is in good standing. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule.
- [(c) Notwithstanding the foregoing paragraph, a person who has graduated from a law school in an English-speaking, common law country and who has pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association shall be eligible to apply for examination provided that such person is (a) a member in good standing of the bar of that

country, or (b) the holder of a master's degree from a law school approved by the American Bar Association or (c) a member of the bar of one of the States of the United States who was admitted after examination and is in good standing. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country shall have the burden of proving that the requirements of this paragraph have been met. In addition to filing the petition and questionnaire for admission, any foreign law school graduate seeking admission must file an affidavit, signed under oath, attesting that the requirements of this paragraph have been met and submitting information sufficient for the court to determine that the requirements have been met.]

[Rule 42(10)(a)(ii)]

(ii) Have graduated from[:

- (A)] a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school; from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school; or from a law school in an English speaking, common law country having pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule; [or
- (B) a law school in an English-speaking, common law country and shall have pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country: (1) shall have the burden of proving that the requirements of this subparagraph (B) have been met; and (2) must file an affidavit, signed under oath, attesting that the requirements of this subparagraph (B) have been met and submitting information sufficient for the court to determine that said requirements have been met;]

(c) Have graduated from[:

- (A)] a law school approved by the American Bar Association having a three (3) year course and requiring students to devote substantially all their working time to study, called a full-time law school; from a law school approved by the American Bar Association having a course of not less than four (4) school years equivalent in the number of working hours to a three (3) year course in a full-time law school and in which students devote only part of their working time to their studies, called a part-time law school; or from a law school in an English speaking, common law country having pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. A combination of study in full-time and part-time law schools will be accepted only if such law schools meet the above requirements, and the applicant shall have graduated from one or the other. Study in any law school which conducts its courses by correspondence or does not require attendance of its students at its lectures or classes shall not constitute compliance with the rule; [or
- (B) a law school in an English-speaking, common law country and shall have pursued a course of study substantially equivalent to that of a law school approved by the American Bar Association. Any person who seeks admission to practice law in the State of New Hampshire who is a graduate of a law school in a foreign country: (1) shall have the burden of proving that the requirements of this subparagraph (B) have been met; and (2) must file an affidavit, signed under oath, attesting that the requirements of this subparagraph (B) have been met and submitting information sufficient for the court to determine that said requirements have been met;]

APPENDIX G

Amend Superior Court Rule 35(b)(1) and adopt new subsection 35(g) as follows (proposed new material is in **[bold and in brackets]**):

[Rule 35(b)(1)]

- **b. Scope of Discovery.** Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:
- (1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

[When a party withholds materials or information otherwise discoverable under this rule by claiming that the same is privileged, the party shall promptly and expressly notify the opposing party of the privilege claim and, without revealing the contents or substance of the materials or information at issue, shall describe its general character with sufficient specificity as to enable other parties to assess the applicability of the privilege claim. Failure to comply with this requirement shall be deemed a waiver of any and all privileges.]

[Rule 35(g)]

- [g. Discovery abuse; sanctions.
- (1) The court may impose appropriate sanctions against a party or counsel for engaging in discovery abuse. Upon a finding that discovery abuse has occurred, the court should normally impose sanctions unless the offending party or counsel can demonstrate substantial justification for the conduct at issue or other circumstances that would make the imposition of sanctions unfair. Discovery abuse includes, but is not limited to, the following:

- (a) employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or undue burden or expense;
- (b) employing discovery methods otherwise available which result in legal expense disproportionate to the matters at issue;
- (c) making, without substantial good faith justification, an unmeritorious objection to discovery;
- (d) responding to discovery in a manner which the responding party knew or should have known was misleading or evasive;
- (e) producing documents or other materials in a disorganized manner or in a manner other than the form in which they are regularly kept;
- (f) failing to confer with an opposing party or attorney in a good faith effort to resolve informally a dispute concerning discovery.
- (2) The sanctions which may be imposed for discovery abuse include, but are not limited to, the following:
 - (a) a monetary sanction in an amount equal to the unnecessary expenses incurred, including reasonable attorney's fees, as the result of the abusive conduct;
 - (b) an issue sanction that orders that designated facts be taken as established by the party who has been adversely affected by the abuse;
 - (c) an evidence sanction that prohibits the offending party from introducing certain matters into evidence;
 - (d) a terminating sanction that strikes all or part of the claims or defenses, enters full or partial judgment in favor of the plaintiff or defendant, or stays the proceeding until ordered discovery has been provided.]

APPENDIX H

Amend Superior Court Rule 62 by deleting said rule in its entirety and replacing it with the following:

62. (I) Initial Structuring Conference

- (A) The Clerk shall schedule a Structuring Conference for each case entered on the civil and equity dockets unless otherwise ordered by the court. The Structuring Conference shall be held within forty-five (45) days after the return date or at such other time as the court may order.
- (B) (a) Telephonic Participation at Structuring Conference. Structuring Conferences shall generally be conducted by telephone; unless the court orders otherwise, the parties shall participate in the Structuring Conference by telephone. Any party or attorney wishing to appear before the court in person rather than by telephone must file a written request not later than ten days prior to the Structuring Conference to seek authorization for such personal appearance.
- (b) Counsel, or parties if unrepresented, shall participate in the Structuring Conference and shall be prepared and authorized to discuss the issues and set schedules for discovery and other case preparation, including additional conferences with the court, Alternative Dispute Resolution, Summary Jury Trial, and settlement or trial.
- (c) The court shall establish, by administrative order, guidelines for participation in a Structuring Conference by telephone, including requirements for selection and use of a private service provider. A party or attorney should consult the guidelines for information about the provider and any fees for the service. Copies of the guidelines shall be available to the public at the clerk's office, and shall be available over the Internet, through the webpage for the Superior Court, at:

http://www.courts.state.nh.us/superior/index.htm

- (d) The record, if any, on any telephone conference will be by electronic recording device or such other method approved by the court.
- (C) No later than twenty days prior to the Structuring Conference counsel for all parties, or parties if unrepresented, shall either meet and confer personally or by telephone to discuss the claims, defenses and counterclaims and to attempt to reach agreement on the following matters: (1) a proposed date for trial and an estimate of the length of the trial; (2) an election to proceed

either under standard discovery or fast track discovery; (3) a discovery schedule, including dates for the disclosure of each party's experts and experts' reports, and deadlines for the filing of pretrial motions of various kinds; (4) the scope of discovery, including particularly with respect to information stored electronically or in any other medium, the extent to which such information is reasonably accessible, the likely costs of obtaining access to such information and who shall bear said costs, the form in which such information is to be produced, the need for and the extent of any holds or other mechanisms that have been or should be put in place to prevent the destruction of such information, and the manner in which the parties propose to guard against the waiver of privilege claims with respect to such information; and (5) a proposed date by which the parties will be ready for Alternative Dispute Resolution (ADR), the form of ADR to be used, and an estimate of the time required for ADR.

- (D) Ten days prior to the Structuring Conference the parties shall file a comprehensive written stipulation, signed by all counsel, or by parties if unrepresented, addressing all of the foregoing matters on which agreement was reached. If the parties have been unable to reach agreement on one or more issues, each party shall submit a proposed order on those matters as to which agreement has not been reached. At the same time, all parties shall file summary statements necessary to support their respective claims, defenses or counterclaims. This summary statement shall be comprehensive and made in good faith, but shall not be admissible at trial. The purpose of the summary statement is to apprise the court of the nature of the claims, defenses, and legal issues likely to arise.
- (E) At the initial structuring conference, after consultation with counsel, or with parties if unrepresented, the court shall order that the case proceed under one of the following discovery options: (1) fast track; or (2) standard. In determining which discovery option shall be employed, the Court shall consider the following:
 - (a) the likely amounts in dispute;
 - (b) the nature and complexity of the issues presented;
 - (c) the resource equality of the parties; and
 - (d) the importance to a just adjudication of permitting discovery beyond that generally permitted under the fast track option.

Cases selected for standard discovery shall be governed by the Superior Court Rules other than Rule 62(B) below. Cases selected for fast track discovery shall be governed by the Superior Court Rules including Rule 62(B).

At or immediately after the initial structuring conference the court shall, and with the approval of the presiding justice the clerk may, issue a STRUCTURING CONFERENCE ORDER. Said order may approve the stipulation(s) reached by the parties, may adopt the proposals made by one or more of the parties, or may establish such other trial and pretrial dates and schedules as the court deems appropriate.

(II) Fast Track Discovery

In those cases selected for fast track discovery, the parties shall file disclosure statements with the court within ninety (90) days of the date of such selection. The disclosure statements shall contain the following:

- (a) the factual bases of the claim or defense;
- (b) the legal theories upon which the claim or defense is based;
- (c) identification of witnesses and other persons known to have information relevant to the action and a brief summary of their expected testimony or information;
- (d) copies of any written or recorded statements made by those persons listed in response to subparagraph (c) above;
- (e) the names and addresses of experts, which shall be limited to one expert per side, together with the disclosures required by RSA 516:29-b;
 - (f) a list of all exhibits intended to be used at trial; and
- (g) a list of all documents and things known by a party to exist and which the party believes may be relevant to the case, whether or not such documents or things are in the party's possession or are intended to be offered in evidence at trial.

Interrogatories shall be limited to thirty (30) per side and each sub-part of an interrogatory shall be counted as an interrogatory.

Requests for admissions shall be limited to twenty-five (25) per side.

Requests for production of documents shall be limited to ten (10) per side.

Depositions shall be limited to the parties and their experts and no such deposition shall exceed four (4) hours.

The court may vary the requirements governing fast track discovery for good cause shown.

(III) Pretrial Statements

If a pretrial statement is ordered it shall include, by numbered paragraphs, a detailed, comprehensive, and good faith statement, setting forth, if applicable:

- 1. Uncontested issues of fact.
- Contested issues of fact.
- 3. Applicable law.
- 4. Disputed issues of law.
- 5. Specific claims of liability by the party making the claim.
- 6. Defendant's specific defenses.
- 7. Itemized special damages.
- 8. Specification of injuries with a statement as to which, if any, are claimed to be permanent.
 - 9. The status of settlement negotiations.
- 10. A list of all exhibits to be offered in the direct case of each party. The parties, or their counsel, shall bring exhibits, or exact copies of them, to the clerk's office on the day of the trial management conference for examination by opposing parties or their counsel.
 - 11. A list of all depositions to be read into evidence.
 - 12. A waiver of claims or defenses, if any.
 - 13. A list of the names and addresses of all witnesses who may be called.
- 14. Whether there will be a request for a view and, if so, who shall pay the cost in the first instance.
 - 15. The names and addresses of the trial attorneys.

Except for good cause shown, only witnesses listed in the pretrial statement

will be allowed to testify and only exhibits, so listed, will be received in evidence.

(IV) Trial Management Conference

In every case scheduled for trial the clerk shall schedule a trial management conference at which counsel shall have their clients present or available for contact by telephone and shall be prepared to discuss and effectuate settlement and, if necessary, conduct of the trial.

In jury cases requests for instructions shall be submitted in writing at the trial management conference provided such requests pertain to unusual or complex questions of law and are not the ordinary and usual instructions given by the court. Such requests shall include an extra copy for the court. Requests shall not be submitted after the commencement of the trial except for good cause shown.

In non-jury cases, unless otherwise ordered for good cause shown, all requests for findings of fact and rulings of law shall be submitted in writing to the presiding justice at trial no later than the close of the evidence.

Failure to comply with this rule shall constitute grounds for sanctions, including entry of nonsuit, default or such other order as justice may require.

APPENDIX I

Amend Superior Court Rule 94 by amending the last paragraph of the rule as follows (proposed new material is in **[bold and in brackets]**; proposed deleted material is in strikethrough format):

Every motion to suppress evidence 1) shall be filed in accordance with the schedule provided pursuant to Rule 96A [96-A]and 2) shall be in writing and specifically set forth all the facts and grounds in separate numbered paragraphs upon which the motion is based and 3) shall be signed by the defendant or his or her counsel and verified by a separate affidavit of the defendant or such other person having knowledge of the facts upon which the affidavit is based. Such motions shall be filed not later than ten days after a plea of not guilty has been entered [forty-five (45) calendar days prior to the scheduled jury selection date], or within such further [other] time in advance of trial as the Court may order for good cause shown [or may provide for in a pretrial scheduling order]. The Court, in its discretion, may entertain such motions prior to, or during, trial.

APPENDIX J

Amend Superior Court Rule 96-A as follows (proposed new material is in **[bold and in brackets]**):

- 96-A. Criminal case scheduling orders shall be established in each county as follows:
- 1. A pretrial deadline date by which time any plea negotiation must be completed.
 - 2. Discovery deadline date.
- 3. Structuring/scheduling (call of the list) hearings date to conform with plea negotiations deadline date, and filing of Intent to Enter a Guilty Plea(s).
- 4. A. Motions deadline date. [Motions to suppress shall be filed not later than forty-five (45) calendar days prior to the scheduled jury selection date, or within such other time in advance of trial as the Court may order for good cause shown or may provide for in a pretrial scheduling order.]
- B. Special assignment date(s) for any motions sounding in suppression or other motions that may be dispositive (motions to quash, dismiss, etc.) a reasonable time in advance of the plea negotiations deadline date.
- 5. Overall time frame from arraignment or filing of Rule 97 waiver to the date the case(s) is scheduled for trial on the merits.
- 6. Provision for waiver of deadlines upon filing of written motion setting forth good cause for the requested waiver.
- 7. Uniform sanctions for failure to comply with court order governing overall procedures.

APPENDIX K

Amend Superior Court Rule 98 F. as follows (proposed new material is in **[bold and in brackets]**):

F. Other Pretrial Motions.

The parties shall file all pretrial motions other than discovery related motions, including but not limited to motions to dismiss, motions to suppress and motions to sever charges or defendants, not less than forty-five (45) calendar days prior to the scheduled jury selection date [or within such other time in advance of trial as the Court may order for good cause shown or may provide for in a pretrial scheduling order].

APPENDIX L

Adopt on a permanent basis Superior Court Rule 170-B, which was adopted on a temporary basis by supreme court order dated December 22, 2005. No changes are being made to the temporary rule now in effect.

JUDGE-CONDUCTED INTENSIVE MEDIATION

170-B. Judge-Conducted Intensive Mediation of Certain Cases.

- (A) For purposes of this rule only, the term "complex case" shall mean: (1) with respect to any case in which the relief sought is monetary damages, a case wherein there is a realistic possibility the damages awarded could exceed \$250,000.00; and (2) with respect to any case in which relief other than monetary damage is sought, a case wherein the trial can reasonably be expected to last more than five trial days.
- (B) Upon agreement of the parties, the presiding justice may assign a complex case for intensive mediation. Such assignment may be made at or at any time after the initial Rule 62 conference but shall not be made later than 90 days before the trial date except for good cause shown. Assignment of a case to intensive mediation shall not stay, alter, suspend, or delay pretrial discovery, motions, hearings, conferences or trial unless the presiding justice so orders.
- (C) The mediator for intensive mediation conducted under this rule shall be an active, senior active or retired superior court justice other than the justice to whom the case has been assigned for trial or who has presided over any pretrial hearings or ruled upon any pretrial motions. The justice who serves as mediator and all persons who participate in the mediation shall have no communication with the justice to whom the case is assigned for trial concerning the mediation or any matter pertaining to the merits of the case. All justices who serve as mediators pursuant to this rule shall have completed an approved mediation training program. The provisions of Rule 170(D)(2), 170(E) and 170(J) shall apply to all superior court justices who serve as mediators under this rule.
- (D) The parties shall be provided at least 30 days advance notice of the date, time and location of the mediation session and of the name of the justice who will be serving as the mediator. Any party claiming grounds to recuse the justice assigned as mediator, shall file a motion for such relief within 10 days

after the date of the notice scheduling the mediation. Any such motion shall be referred for ruling to the justice assigned as the mediator and said justice's ruling on the motion shall be final and not subject to further review. In the event the justice assigned as mediator grants the motion to recuse, the case shall be reassigned to another justice for mediation. Mediation sessions shall be held at a court facility but, subject to the availability of facilities, normally shall be held in a location other than the court wherein the case will be tried.

(E) Mediation under this rule shall be conducted in accordance with the procedures specified in Rule 170(G)(1), 170(H) and 170(I), except that (1) the summaries submitted by the parties may be up to 10 pages in length and (2) in addition to the materials listed in Rule 170(G)(1)(a), the parties at the same time also shall provide the mediator with an estimate of the time needed to properly mediate the case. Normally cases assigned under this rule shall be allotted one full day for mediation, but the mediator has the discretion to reduce or increase the time as s/he deems appropriate. The mediator also may schedule a pre-mediation conference if, in his or her discretion, such a conference will facilitate the speedy and efficient conduct of the mediation or resolution of the case.

APPENDIX M

Repeal Superior Court Administrative Rules 1-1, 1-2, and 3-2 through 3-16 in their entirety.

APPENDIX N

Adopt on a permanent basis Superior Court Administrative Rule 1-6 (IV), which was adopted on a temporary basis by supreme court order dated October 12, 2005. No changes are being made to the temporary rule now in effect.

- IV. To perform the following acts and issue such orders as provided for in the superior court rules, in addition to those rules where the clerk's authority is already specifically delineated:
 - (a) To enter default and continue for judgment pursuant to Rule 14.
- (b) Upon withdrawal of counsel to set a date for the filing of a new appearance pursuant to Rule 20.
 - (c) To discontinue cases pursuant to Rule 52.
 - (d) To allow the withdrawal of court documents pursuant to Rule 56.
 - (e) To enter final judgment pursuant to Rule 74.
- (f) In conjunction with the presiding justice, to enter scheduling orders pursuant to Rule 96-A.
- (g) To enter orders regarding service by publication pursuant to Rule 128 and Rule 180.
 - (h) To enter default pursuant to Rule 131 and Rule 139.
- (i) To dismiss marital cases which have been pending for two years pursuant to Rule 210.
 - (j) To waive the waiting period in marital cases pursuant to Rule 207.
- (k) To non-suit or dismiss non-jury cases which have been pending for three years pursuant to Rule 168.
- (1) To waive the records research fee in Rule 169 when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

The signature of the clerk or the attorney deputy clerk taking any action enumerated in paragraph IV shall appear on the appropriate document involved along with the statement "Acting pursuant to Superior Court Administrative Rule 1-6." In the event that a motion to reconsider or an objection is filed concerning the action taken, the matter shall be scheduled for a hearing before a justice.

APPENDIX O

Amend Superior Court Administrative Rule 3-1 by deleting said rule in its entirety and replacing it with the following:

Stenographers' Notes

3-1. Stenographers' Notes.

(a) Ownership. Any and all stenographers' notes and transcripts of the same shall be the sole property of the Superior Court. This rule does not infringe upon the rights of stenographers to be paid for transcripts they produce.

(b) Preservation of Records.

- (1) Civil and Equity Cases. All stenographic notes in civil and equity cases may be destroyed six years following the date the notes were recorded.
- **(2) Criminal Cases.** All stenographic notes in criminal cases may be destroyed ten years following the date the notes were recorded.
- (3) Subsections (1) and (2) notwithstanding, stenographic notes in any civil, equity or criminal case may be destroyed three years after a complete transcription of the notes has been made and filed.

APPENDIX P

Amend District Court Rule 2.17 by adopting a <u>new</u> section D., which shall state as follows:

- D. In juvenile cases, the Court may place a juvenile on conditional release under the supervision of a Juvenile Probation and Parole Officer (JPPO). The terms and conditions of release, unless otherwise prescribed by the Court, shall be as follows:
 - (a) You shall comply with all orders of the Court.
- (b) You shall be of good behavior and remain arrest free, obey all laws and cooperate with your parent(s) or custodian at all times.
- (c) You shall, if under 16 years of age, attend school full-time and follow all school rules.
- (d) You shall, if 16 years of age or older, either be lawfully employed or actively engaged in an employment plan approved by your JPPO or attend school full-time and follow all school rules. If attending school only part-time, you shall also be lawfully employed or actively engaged in an employment plan approved by your JPPO.
- (e) You shall not consume or possess alcoholic beverages or controlled drugs or any substance or thing determined to be contraband by your JPPO.
 - (f) You shall submit to random drug testing as ordered by the Court.
- (g) You shall attend, and meaningfully participate in, all treatment and counseling as ordered by the Court.
- (h) You shall not possess, transport, control or receive any weapon, explosive device, or firearm.
- (i) You shall report to your JPPO at such times and places as directed by your JPPO.
- (j) You shall immediately notify your JPPO of any arrest, summons, or questioning by a law enforcement officer.
- (k) You shall report any change of address, telephone number, school status, or employment to your JPPO within 24 hours.

- (*l*) You shall submit to reasonable searches as requested by your JPPO of your person, property, possessions, vehicle(s), school locker(s), bags, containers, or any other items under your custody, care, or control.
- (m) You shall submit to visits by your JPPO to your residence and to examinations and searches of your room in the enforcement of your conditions of release.
- (n) You shall regularly report your earnings to your JPPO and be in compliance with your specified budget as approved by your JPPO.
- (o) You shall not associate with any person or be at any place in violation of Court orders or the directives of your JPPO.
- (p) You shall not leave the State of New Hampshire for longer than 24 hours without advance written permission from your parent(s) or guardian or those having legal custody of you. You shall provide your JPPO with said written permission within 24 hours of receipt of said written permission.
- (q) You shall also obtain a Travel Permit when required by the Interstate Compact on Juveniles and AJCA Rules regarding out-of-state travel.
- (r) You shall agree to return to the State of New Hampshire from any State in the United States or any other place voluntarily and without formality as directed by the Court or your JPPO.
 - (s) You shall comply with designated curfew provisions.
- (t) The Court may impose all or part of the above conditions as well as other terms and conditions.

APPENDIX Q

Adopt on a permanent basis District Court Rule 3.3 (III), which was adopted on a temporary basis by supreme court order dated October 12, 2005. No changes are being made to the temporary rule now in effect.

(III) Records Research Fees

- (A) Record information must be requested in writing and include the individual's full name and, if available, the individual's date of birth.
- (B) A fee of \$10.00 per request will be assessed for electronic (computer) searches of less than ten names.
- (C) A fee of \$25.00 per request will be assessed for electronic (computer) searches of ten or more names.
- (D) Extensive electronic (computer) searches requiring more than one hour will be assessed \$25.00 per additional hour or portion thereof.
- (E) A fee of \$25.00 per hour or portion thereof will be assessed for manual searches. The fee is based on this hourly rate and not the number of names per request.
- (F) Charges for requests requiring a combination of manual and electronic searches on the same party will be assessed according to the fee schedule for both categories.

EXAMPLE: One request for electronic search with seven names = \$10.00. Additional requirement that one or more of those seven names be manually researched as well = \$25.00 per hour or portion thereof. Assuming the manual research is completed in less than one hour, then the total fee = \$35.00.

(G) The Clerk may waive the records research fee when a request for record information is made by a member of the media consistent with the public's right to access court records under the New Hampshire Constitution.

APPENDIX R

Amend District Court Rule 4.29, which was adopted on a temporary basis by supreme court order dated July 13, 2005, as set forth below and adopt said rule, as amended, on a permanent basis (proposed new material is in **[bold and in brackets]**; proposed deleted material is in strikethrough format):

Rule 4.29. District Court Small Claims Mediation Policy

- **(A) Purpose.** The District Court establishes these small claims mediation rules to increase access to justice; to increase parties' satisfaction with the outcome; to reduce future litigation by the same parties; to make more efficient use of judicial resources; and to expand dispute resolution resources available to the parties.
 - **(B) Definitions.** For the purpose of this rule, the following definitions apply.
- (1) Mediation. Mediation is a process in which a mediator facilitates settlement discussions between parties.
 - a. The mediator has no authority to make a decision or impose a settlement upon the parties.
 - b. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their rights and positions.
 - c. Any settlement is entirely voluntary.
 - d. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

Mediation is based upon principles of communication, negotiation, facilitation and problem solving that emphasizes:

- a. The needs and interest of the parties
- b. Fairness
- c. Procedural flexibility
- d. Privacy and confidentiality
- e. Full disclosure
- f. Self determination

- (2) Mediator. An impartial person who facilitates discussions between the parties to a mediation. The role of the mediator includes but is not limited to assisting the parties in identifying issues, reducing obstacles to communication, and providing the parties an opportunity for each to be heard in a dignified and thoughtful manner. The mediator's focus will be on encouraging and supporting the parties' presentations to and reception from one another allowing them to find a resolution that is appropriate.
- (3) Party. Any person whose name is designated on the record as plaintiff or defendant and their attorney or any other person who has filed an appearance.
- **(C) Mediator Qualifications.** Mediators shall satisfy the qualifications and criteria specified by the Supreme Court. Minimum qualifications include: completion of a 20-hour mediation process training; two years experience as a mediator or equivalent experience, and an understanding of civil and landlord/tenant law is helpful.

All mediators serving as small claims mediators shall contract with the Administrative Office of the Courts for a term of one year.

- **(D)** Referral of cases to mediation. Small Claims cases may be referred to mediation where requested by any party and all remaining parties indicate that they desire to proceed with mediation.
- **(E) Mediator Assignment.** The Administrative Judge of the District Court shall determine the mediation needs for each District Court. Assignment of mediators shall be based on the mediator needs of each court.

Each District Court shall schedule small claims cases and allocate mediator(s) in a manner that accommodates the small claims case load in their court.

- **(F) Payment of mediator fees.** Small Claims mediators shall be paid on a per case fee set by the Supreme Court. Payments shall be made out of the Mediator Fund established by the court. No additional fees or reimbursements shall be made.
- **(G) Disclosure of Conflict.** Upon receipt of a notice of appointment in a case, the mediator shall disclose any circumstances likely to create a conflict of interest, the appearance of conflict of interest, a reasonable inference or **[of]** bias or other matter that may prevent the process from proceeding as scheduled.
- (1) If the mediator withdraws, has a conflict of interest or is otherwise unavailable, another mediator shall be appointed by the court.
- (2) The burden of disclosure rests on the mediator. After appropriate disclosure, the mediator may serve if both parties so desire. If the mediator

believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

- **(H) Impartiality.** Impartiality shall be defined as freedom from favoritism or bias in word, action and appearance.
- (1) Impartiality implies a commitment to aid all parties, as opposed to an individual party, when moving toward an agreement. A mediator shall be impartial and shall advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.
- (2) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of the proposed options for settlement.
- (3) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.
- (4) A mediator shall not give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney or any other person involved and arising from the mediation process.
- **(I) Prohibitions.** A mediator shall not provide counseling or therapy to any party during the mediation process nor shall a mediator who is an attorney represent either party, or give legal advice during or after the mediation.

The mediator shall not use the mediation process to solicit or encourage future professional services with either party.

- **(J) Self determination.** A mediator shall assist the parties in reaching an informed and voluntary settlement. Decisions are to be made voluntarily by the parties.
- (1) A mediator shall not coerce or unfairly influence a party into a settlement agreement and shall not make a substantive decision for any party to a mediation process.
- (2) A mediator shall not intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation.
- (3) A mediator shall promote consideration of the interest of persons affected by actual or potential agreements who are not present during a mediation.
- (4) The mediator shall promote mutual respect amongst the parties throughout the process.

- **(K) Professional Advice.** A mediator shall only provide information the mediator is qualified by training or experience to provide.
- (1) When a mediator believes a non-represented party does not understand or appreciate how an agreement may adversely effect legal rights or obligations, the mediator shall advise the participants to seek independent legal counsel.
- (2) While a mediator may point out a possible outcome of the case, under no circumstances may a mediator offer a personal or professional opinion as to how the court in which the case is filed will resolve the dispute.
- **(L) Confidentiality.** A mediator shall preserve and maintain the confidentiality of all mediation proceedings. Any communications made during the mediation which relates to the controversy mediated, whether made to the mediator or a party, or to any other person present at the mediation is confidential.
- (1) A mediator shall keep confidential from the other parties any information obtained in an individual caucus unless the party to the caucus permits disclosure.
- (2) All memoranda, work products and other materials contained in the case file of a mediator are confidential. The mediator shall render anonymous all identifying information when materials are used for research, training or statistical compilations.
- (3) Confidential materials and communications are not subject to disclosure in any judicial or administrative proceedings except for any of the following:
 - a. Where the parties to the mediation agree in writing to waive the confidentially.
 - b. When a subsequent action between the mediator and a party to the mediation for damages arises out of the mediation.
 - c. Where there are threats of imminent violence to self or others.
 - d. Where reporting is required by state law.
- **(M) Inadmissibility of Mediation Proceeding.** Mediation proceedings under this rule are non-binding and shall not impair the right of the litigants to demand a trial. Any settlement reached at mediation shall be binding on the parties and entered as a judgment. Information, evidence or the admission of any party shall not be disclosed or used in any subsequent proceeding.
- (1) Statements made and documents prepared by a party, attorney, or other participant in the aid of such proceedings shall be privileged and shall not

be disclosed to any court or construed for any purpose as an admission against interest.

- (2) All mediation proceedings are deemed settlement conferences as prescribed by court rule and the Rules of Evidence. In addition, the parties shall not introduce into evidence in any subsequent proceeding the fact that there has been a mediation proceeding.
- (3) Evidence that would otherwise be admissible at trial shall not be rendered inadmissible as a result of its use in a mediation proceeding under this rule.
- (4) A mediator shall not be called as a witness in any subsequent proceeding relating to the parties' negotiation and participation except as set forth in Section N of this rule.
- **(N) Concluding Mediation.** If an agreement is reached during the mediation process, the parties shall reduce their agreement to a written memoranda on the points on which agreement has been reached, and the memoranda shall be reviewed and signed by all parties before the mediation ends.

If an agreement is not reached during the mediation process, the mediator shall notify the court that the mediation failed to resolve the issue in conflict.

- (O) Immunity. No mediator shall be held liable for civil damages for any action, statement, admission or decision made in the course of mediation unless that statement, action, admission, or decision is grossly negligent and made with malice or is in willful disregard for the safety or rights of any party to the mediation. [The parties must recognize that the mediator will not be acting as legal advisor or legal representative. They must further recognize that, because the mediator is performing quasi-judicial functions and is performing under the auspices of the District Court, each such mediator has immunity from suit, and shall not be called as a witness in any subsequent proceeding relating to the parties' negotiations and participation except as set forth in Section N of this rule.]
- **(P) Implementation.** The Administrative Judge of the District Court shall be responsible for designating an implementation schedule for the small claims mediation program. Initially, each county shall have at least one District Court designated to provide small claims mediation. The program shall be implemented in the remaining courts on a scheduled developed by the Administrative Judge for the District Court.
- **(Q) Removal from list of small claims mediators.** Certification to mediate Small Claims Cases in the District Court confers no vested rights to the mediator, but is a conditional privilege that is revocable.

- (1) At any time during the period of certification, upon notice and opportunity to be heard, a small claims mediator who is found to have engaged in conduct that reflects adversely on his/her impartiality or in the performance of his/her duties as a mediator, or is found to have persistently failed to carry out the duties of a mediator, or is found to have engaged in conduct prejudicial to the proper administration of justice, shall be removed from the list of certified small claims mediators.
- (2) All complaints regarding a mediator's performance shall be forwarded to the NH Judicial Branch Alternative Dispute Resolution Administrator who will investigate the complaint. The Administrator will give notice and opportunity for all parties to be heard and make all final decisions [recommendations to the Administrative Judge of the District Court] regarding what action, if any, will be taken [by the Administrative Judge].
- (3) All Small Claims mediators must inform the Judicial Branch Alternative Dispute Resolution Administrator and Administrative Justice [Judge] of the District Court within 30 days of a change in circumstances such as a conviction of a felony or loss of professional license. Small Claims mediators who are convicted of a felony or misdemeanor involving moral turpitude, or who have a professional license revoked, shall be denied certification.

APPENDIX S

Adopt on a permanent basis Family Division (Domestic Relations) Rule 16, which was adopted on a temporary basis by supreme court order dated November 15, 2005. No changes are being made to the temporary rule now in effect.

16. Agreed Upon or Proposed Decrees:

- A. Agreed upon or proposed decrees must be filed at all temporary or final divorce, legal separation or parenting hearings. Any temporary decree for divorce or legal separation must follow the format set forth in Family Division Domestic Relations Rule 28A. Any final decree for divorce or legal separation must follow the format set forth in Family Division Domestic Relations Rule 28B. Any temporary or final decree for parenting actions must follow the format set forth in Family Division Domestic Relations Rule 29.
- B. All stipulations, agreements, and proposed decrees shall be typewritten and signed by the parties and, if represented by counsel, by attorneys for the parties. The court may accept handwritten stipulations or agreements provided the parties file a typewritten substitute with the court within ten days. A typewritten substitute does not need to contain signatures.

APPENDIX T

Adopt on a permanent basis Family Division (Domestic Relations) Rule 26, which was adopted on a temporary basis by supreme court order dated November 15, 2005. No changes are being made to the temporary rule now in effect.

26. Parenting Plans:

- A. Parenting plans shall be filed in all divorce and legal separation actions where there are minor children, and in all parenting actions. Parents shall work together to agree upon as many provisions of the parenting plan as possible. Exceptions to the requirement that parents work together on parenting plans include cases where there is evidence of domestic violence, child abuse, or neglect, or as otherwise excused by the court.
- B. In any divorce, legal separation, or parenting action in which a temporary parenting order is requested, a temporary parenting plan must be filed at the temporary hearing.
- C. A final parenting plan must be filed at the final hearing in any final divorce or legal separation action where there are minor children, and in all final parenting actions.
- D. Parenting plans must be filed in all actions to modify final parenting plans or prior final parenting-related orders issued in divorce, legal separation, or custody actions.
- E. Parties may use the parenting plan form provided by the court or may create their own parenting plan. However, parties who create their own parenting plans must adhere to the standard order of lettered paragraphs set forth at Family Division Domestic Relations Rule 27, Standard Order of Paragraphs for Parenting Plan.
- F. All parenting plans required by this rule shall be filed as separate documents, signed by one or more parties.
- G. For all actions requiring parenting plans, if a complete parenting plan is not agreed upon by the parties which includes every provision of the Standard Order of Paragraphs for Parenting Plan, a partially agreed-upon parenting plan, signed by the parties, and a proposed parenting plan for the remaining provisions must be filed by each party.

APPENDIX U

Adopt on a permanent basis Family Division (Domestic Relations) Rule 27, which was adopted on a temporary basis by supreme court order dated November 15, 2005. No changes are being made to the temporary rule now in effect.

27. Standard Order of Paragraphs for Parenting Plan:

All parenting plans shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- A. Decision Making Responsibility
 - 1. Major Decisions
 - 2. Day-to-Day Decisions
 - 3. Other
- B. Residential Responsibility & Parenting Schedule
 - 1. Routine Schedule
 - 2. Holiday and Birthday Planning
 - 3. Three-day weekends
 - 4. Vacation Schedule
 - 5. Supervised Parenting Time
 - 6. Other Parental Responsibilities
- C. Legal Residence of a Child for School Attendance
- D. Transportation and Exchange of the Child(ren)
- E. Information Sharing and Access, Including Telephone and Electronic Access
 - 1. Parent-Child Telephone Contact
 - 2. Parent-Child Written Communication

- F. Relocation of a Residence of a Child
- G. Procedure for Review and Adjustment of Parenting Plan
- H. Method(s) for Resolving Disputes
- I. Other Parenting Agreements Attached

APPENDIX V

Adopt on a permanent basis Family Division (Domestic Relations) Rule 28, which was adopted on a temporary basis by supreme court order dated November 15, 2005. No changes are being made to the temporary rule now in effect.

28. Standard Order of Paragraphs for Temporary and Final Decrees on Divorce and Legal Separation:

- A. **Temporary**: All temporary agreements and proposed decrees shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.
 - 1. Type of Case.
 - 2. Parenting Plan and Uniform Support Order.
 - 3. Tax Exemptions for Children.
 - 4. Guardian ad Litem Fees.
 - 5. Alimony.
 - 6. Health Insurance For Spouse.
 - 7. Life Insurance.
 - 8. Motor Vehicles.
 - 9. Furniture and Other Personal Property.
 - 10. Retirement Plans and Other Tax-Deferred Assets.
 - 11. Other Financial Assets.
 - 12. Business Interests of the Parties.
 - 13. Division of Debt.
 - 14. Marital Home.
 - 15. Other Real Property.
 - 16. Enforceability after Death.
 - 17. Restraints against the Property.
 - 18. Restraining Order.
 - 19. Other Requests.

- B. **Final**: All final agreements and proposed decrees shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.
 - 1. Type of Case.
 - 2. Parenting Plan and Uniform Support Order.
 - 3. Tax Exemptions for Children.
 - 4. Guardian ad Litem Fees.
 - 5. Alimony.
 - 6. Health Insurance For Spouse.
 - 7. Life Insurance.
 - 8. Motor Vehicles.
 - 9. Furniture and Other Personal Property.
 - 10. Retirement Plans and Other Tax-Deferred Assets.
 - 11. Other Financial Assets.
 - 12. Business Interests of the Parties.
 - 13. Division of Debt.
 - 14. Marital Home.
 - 15. Other Real Property.
 - 16. Enforceability after Death.
 - 17. Signing of Documents.
 - 18. Restraining Order.
 - 19. Name Change.
 - 20. Other Requests.

APPENDIX W

Adopt on a permanent basis Family Division (Domestic Relations) Rule 29, which was adopted on a temporary basis by supreme court order dated November 15, 2005. No changes are being made to the temporary rule now in effect.

29. Standard Order of Paragraphs for Decree on Parenting Petition:

All agreements and proposed decrees in parenting actions shall be set forth in the following order of paragraphs. "N/A" may be used to denote paragraphs that do not apply to a particular situation.

- 1. Parenting Plan and Uniform Support Order.
- 2. Tax Exemptions for Children.
- 3. Guardian ad Litem Fees.
- 4. Life Insurance.
- 5. Enforceability after Death.
- 6. Restraining Order.
- 7. Other Requests.

APPENDIX X

Adopt on a permanent basis Family Division (Domestic Relations) Rule 30, which was adopted on a temporary basis by supreme court order dated November 15, 2005. No changes are being made to the temporary rule now in effect.

30. Personal Data Sheet:

At the time of filing any initial pleading or pleading that brings an action forward, the filing party shall, and the responding party may, file a completed personal data sheet. Should a party become aware of any change in addresses, telephone numbers, or employment during the pendency of a case or of any outstanding support order, that party shall notify the court of such change. Access to information contained in the personal data sheet shall be restricted to court personnel, the Office of Child Support, the court-appointed mediator, the guardian ad litem, the parties, and counsel unless a party has requested on the data sheet that it not be disclosed to the other party.